FILED

No. 04 628 OCT 13 2004

In The Supreme Court of the United States

ALLEN V. JAFFE,

Petitioner,

v.

LISA GOODWIN, ATTORNEY; JOHN R. WALK, ATTORNEY; HIRSHLER, FLEISHER, WEINBERG, COX AND ALLEN, P.C.; DR. RONALD MARK LANDESS, DPM; CATHERINE HAMMOND, JUDGE; AND VIRGINIA PHOTOTHERAPY, L.L.C.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether the Fourth Circuit improperly concluded that the Rooker-Feldman doctrine was applicable. This court should grant certiorari to clear up confusion in the misapplication of Rooker-Feldman to bar this and other 1983 Constitutional claims that: (A) are entirely separate and distinct from the result of the state court judgments and the injuries alleged are distinct as well; (B) are not inextricably intertwined with and do not seek to review or overturn the state court judgments; (C) have not been decided by a state court, nor was a fair opportunity to litigate the federal claims provided; (D) involve parties who were not named as defendants in the state court actions.

Parties To The Proceeding

Petitioner is Allen V. Jaffe was the plaintiff, pro se,.

Respondents are Lisa Spickler Goodwin, attorney; John R. Walk, attorney; Judge Katherine Hammond, Judge; Hirshler, Fleisher, Weinberg, Cox and Allen, P.C., a professional corporation; Ronald Mark Landess, Doctor, DPM; and Virginia Phototherapy, L.L.C.

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Petitioner respectfully petitions for a Writ of Certiorari to review the judgments of the Federal District Court, Richmond, Virginia and the Fourth Circuit Court of Appeals.

Opinions Below

The opinion of the United States Court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United Stated district court appears at Appendix B to the petition and is unpublished.

Statement Of Jurisdiction

The date on which the United States Court of Appeals decided my case was July 15, 2004.

A petition for rehearing was mailed via certified mail for filing on July 29, 2004, and was denied on July 30, 2004.

The jurisdiction of this court is invoked under 28 U.S.C. §1254

Constitutional and Statutory Provisions Involved

The questions presented implicate the following provisions of the Unites Sates Constitution:

First Amendment
"right to petition the Government for a redress of grievances"

Seventh Amendment
"right of trial by jury shall be preserved"

Ninth Amendment

"The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"

Fourteenth Amendment

"No state shall make or enforce any law which shall bridge the privilege or immunities of citizens of the united states; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Code Title 42 sec. 1983

Every person who, under color of and statute, ordinance, regulation, cusstom, or usage, of and State or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considerd to be a statute of the District of Columbia.

U.S. Code Title 42 sec. 1985(2)

If two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in anh State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, attempting to enforce , the right of any

person, or class of persons, to the equal protection of the laws.

Statement Of The Case

Background

Jaffe, pro se, filed a personal injury claim in the Circuit Court, Henrico County, Va. against the sole defendant Virginia Phototherapy, L.L.C., styled CL 02-1729, as a result of hair removal treatments using an for injuries resulting from the adulterated misuse of an FDA regulated medical device for the purpose of "permanent" hair removal.

A motions hearing was held on January 24, 2003, for the action styled CL 02-1729 , during which the judge's first ruling was to recuse herself, on Jaffe's motion to disqualify, from all matters involving the plaintiff Jaffe.

However, rather than perform the ministerial duties of remanding the related cases before her for hearing by a new judge, she instead remained on the bench and continued to preside, even over Jaffe's objections. Among her improper rulings was the dismissal of CL02-1730 as Res Judicata.

An appeal was noticed. The primary foundation of the appeal was the improper post-recusal rulings.

The defendants, as officers of the court, intentionally and knowingly submitted an incorrect order to the court. The order which was presented to and signed by the Judge, without Jaffe's knowledge, deliberately omitted the Judge's order of recusal. The omission was crucial and deliberate; and cannot be considered "harmless error because Jaffe was never sent a copy of the order for his signature, nor was a copy certified as having been sent to Jaffe.

Finally, in contrast to harmless error, the defendants never apologized, nor sought to correct their "mistakes". When Jaffe filed a motion to correct that order "nunc pro tunc", the defendants **objected to any such correction.** Furthermore, defendants admitted that they **knew** the order was incorrect on its submission and their only defense was that it was a **"sketch Order"**. However, A reasonable person must ask , if in fact, it was a sketch order, 'why would they knowingly submit an incorrect sketch order?; and, if they knew it was an incorrect sketch order 'when were they planning correct the order ?'; and finally, ' if in fact it was a "mistake" or "harmless error", then why did they object to its corrections "nunc pro tunc"?'

Because of that deceitful and deliberately deficient order, which the defendants, by further deceitful actions under color of law, were ultimately successful in keeping uncorrected; Jaffe's due process rights were thwarted and his petition for appeal to the Virginia Supreme Court was refused .

To further insure that Jaffe would not have his appeal heard, the judge, contrary to the rules of the Supreme Court of Virginia, refused to sign or amend and sign the properly submitted statement of facts . The absence of the statement of facts was stated as grounds for the court's refusal of the petition..

The petition for appeal to the Virginia Supreme Court filed on April 21, 2003 was denied on June 25, 2003 . A timely petition for rehearing was filed and denied.

Currently

In order to seek review of the state court judgement, Jaffe noticed his appeal to the Supreme Court of the United

States under special Writ of Certiorari; meanwhile, and in order to seek a remedy for the violations of his right to due process guaranteed under the Constitution, this separate Federal 1983, 1985 due process claim was filed in the Federal District Court, Richmond Division.

The Writ of Certiorari to the Supreme Court seeking review of the Virginia State Court judgments was denied , without opinion; and the original parties entitlements were **fixed** by that judgment; and litigation was "**concluded".**

Jaffe's pending Federal claim, which was filed shortly after the Notice of Appeal to the Supreme Court, is an independent, enforceable Constitutional 1983 and 1985 due process claim which is **distinct** from the state court judgment. The claim alleges prior injuries by officers of the court and their accomplices, under color of law, that a state court has not remedied, is not inextricably intertwined, and does not seek to set aside the state court judgment.

The Federal 1983,1985 claim, before this Supreme Court, was dismissed for lack of jurisdiction on the erroneous application of the Rooker-Feldman doctrine. As the records show, clearly the matter is exempt from the doctrine's application. The matter was then petitioned for appeal to the Fourth Circuit Court of Appeals and denied.

Reasons For Granting The Writ Of Certiorari

The decision applying the Rooker-Feldman doctrine to dismiss this federal claim for lack of jurisdiction satisfies multiple criteria for Supreme Court review. While the doctrine is crucial in assuring the integrity of state court judgments, if not carefully considered, its misapplication, as in this Federal claim, serves only to emphatically deny constitutional rights.

1. The decision below applying Rooker-Feldman, conflicts with earlier decisions of this Supreme Court, and at least six other Federal Circuits on this important issue of federal law

2. The decision below raises important constitutional questions because the misapplication of the doctrine: (a) denies the right to petition the government for a redress of (1983 ,1985) grievances under the 1st Amendment; (b) denies the right of trial by jury under the 7th Amendment; (c) denies or disparages the right to due process as guaranteed under the 9th Amendment; and (d) denies the equal protection of the laws under the 14th Amendment.

3. The decision below involves a federal question of law that is so important that the Supreme Court should pass upon it even absent a conflict. The decision frankly creates an irreconcilable split among the Second, Third, Seventh, Eighth, Ninth and Eleventh circuits which have considered the application of Rooker-Feldman. The inconsistent holdings raise the danger that in the future, courts will continue to have great difficulty with its application. Because the decision has a significant impact not just on this petitioner, but on a large segment of the national population seeking Constitutional 1983,1985 due process remedies, this issue is one where uniformity counts.

A. Rooker-Feldman does not bar jurisdiction over independent constitutional 1983,1985 claims for violations by officers of the court and fellow accomplices when those claims are entirely separate and distinct from the result of the state court and the injuries alleged are distinct as well. Contrary to the unsupported and erroneous finding of the district court, the defendants cannot hide behind non-existent abstension, or preclusion barriers that are not applicable under federal law or supported by the state record.

The records show that the state court judgement sought a remedy for personal injury in tort against the sole defendant Virginia Phototherapy, L.L.C.. The claim was dismissed as Res judicata. The decision was appealed to the Supreme Court of Virginia and denied, then to the Supreme Court of the United States which denied without opinion. The original parties **entitlements were fixed by those judgments**

The doctrine was misapplied because this is an "independent action" between Jaffe and the Lisa Goodwin, et al, alleging harm by the defendants as a result of their deceitful or incompetent post-judicial actions. This claim is enforceable and distinct from the state court judgment and alleges prior injuries under color of law. The suit is far from the core of the doctrine, which should not have been extended to block such an action.

Though the defendants allege that their misconduct occurred pursuant and in connection with the state court proceedings, that does not insulate them from liability, even if the doctrine insulated the original judgment, which it does not.

Jaffe is entitled to his action because those defendants as officers of the court may be sued subject to 1983 equitable relief, declaratory or injunctive, for bad faith judicial misconduct after trial, that is knowing, intentional and in reckless disregard of constitutional rights. This action also seeks injunctive relief to insure that future violations of the Constitution are halted.

The Supreme Court has held in Dennis v. Sparks,449 U.S. (1980) that "private individuals who conspire, or act in concert, with government officials may be sued under §1983. See also Wyatt v. Cole 504 U.S. 158 (1992), when the court held that "private individuals sued under 1983 cannot claim

immunity from suit." In Pulliam v. Allen, 456 U.S. 522(1984) the Supreme Court held although Magistrate Pulliam had acted in her judicial capacity and within her subject matter jurisdiction that does not preclude injunctive or declaratory relief. Her conduct caused private injury to plaintiff Allen.

Citing Ex Parte Virginia,100 U.S. 339, 346 (1880) in which §4 of the Civil Rights Act of 1875, 18 Stat. 336, was employed to authorize a criminal indictment against a judge for excluding persons from jury service on account of their race, this court reasoned that the Fourteenth Amendment prohibits a state from denying any person within its jurisdiction the equal protection of the laws.; see also Pierson v. Ray, 386 U.S. 547, 554, 567 (1967) in which the court found no indication of affirmative congressional 'intent' to insulate judges from the reach of the remedy Congress provided in §1983; see also Mitchum v. Foster, 407 U.S. 225,240-241 (1972) in which the court found §1983 to be an explicit exception to the anti-injunction statutes and concluding "that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in their judicial capacity. It is through suits against state officials pursuant to Ex Parte Young(209 U.S. 123 [1908]) that "state compliance with federal law is achieved".

B. The doctrine does not apply to 1983,1985 claims that are **not** inextricably intertwined with and **do not seek review or overturn the state court judgment**. Clearly, as the records show, the appeal seeking to overturn the state court judgment was petitioned to the Supreme Court of the United States. The petition was denied and that **litigation was concluded**.

Jaffe's independent federal claim seeks only remedies against the federal defendants for their deceitful post- judicial

procedural and ministerial actions, under color of law, which served to deprive Jaffe's of his right to due process and equal protection of the laws.

Petitioner does not seek to set aside a state court judgment, but rather he presents an independent claim that denies a legal conclusion that a state court has reached in a case to which he was a party. The determination by the federal court would not effectively reverse the state or void its ruling. The federal court needs only to assure Jaffe his constitutional right to raise his claims that the courts may view as having a good chance of success; that claim being his constitutional challenge to the deceitful ministerial procedures for enforcement of the state judgment, totally apart from the merits of the state-court action itself; Penzoil Co. v. Texaco Inc., 481 U.S. 1, 25 (1987).

The Third Circuit has held that "When a United States district court is assessing the validity of a rule promulgated in a non-judicial proceeding, it has subject matter jurisdiction because this 'does not require review of a final state-court judgment in a particular case"; Ivy Club v. Edwards, 943 F. 2d 270, 284, (3rd Cir. 1991).

C. The decision conflicts with the other circuits and the Supreme Court (which stated in Rooker-Feldman that the abstention is only applicable to bar claims that "actually arose" in the state court action) which have held that **the doctrine does not apply to claims that have not been decided by a state court, nor was a fair opportunity to litigate the federal claim provided.**

Just as Jaffe's due process 1983,1985 claims have yet to be heard by any court but are now before these federal courts, in Gulla v. North Strabane Township, 146 F. 3d 168 (3ed Cir. 1998), federal due process and equal protection violations were alleged; however the state court dismissed

their appeal for lack of standing without adjudicating their constitutional claims, but the 3rd Circuit stated "since plaintiff could not obtain an adjudication of their claims in state court, they are not precluded from raising their constitutional claims in the Federal forum"; see also Brokaw v. Weaver, 305 F. 3d 660, 667-668 (7th Cir. 2002); Whiteford v. Reed, 155 F. 3d 671,674 (3d Cir. 1998); Mullins v. Oregon, 57 F. 3d 789, 792 (9th Cir. 1995); Marks v. Stinson, 19 F. 3d 873, 885 n. 11(3d Cir. 1994)

In FOCUS v. Allegheny County Court of Common Pleas, 75 F. 3d 834 (3d Cir. 1996), the 3rd Circuit held that when a federal court is asked to directly enjoin a state court judgment, Rooker-Feldman does not act as a bar to the relief requested if the state court did not rule on the issue raised in the federal court proceeding. As the Ninth Circuit has recognized in Robinson v. Ariyoshi, 753 F. 2d 1472 (9th Cir. 1985), "If no consideration has been given...it is unlikely that the issue presented to the state court and to the federal court are so 'inextricably intertwined' that the federal court cannot take jurisdiction".

The ninth circuit went on to conclude again in Robinson 753 F. 2d 1468, 1472-1473 (9th Cir. 1985), that Rooker-Feldman was inapplicable to plaintiff's federal claim because the Hawaii Supreme Court refused to consider these claims during the plaintiff's state court proceedings. This position is also in accord with the views of other circuits, see Lemonds v. ST. Louis County, 222 F. 3d 495, 496 (8th Cir. 2000);Niere v. St. Louis County, 305 F. 3d 834, 836-837 (8th Cir.2002); Brown & Root, Inc. v. Breckenridge, 211 F. 3d 194, 201 (4th Cir. 2000) noting that Rooker Feldman does not bar a claim where a party lacked a reasonable opportunity to raise the issue in state proceedings; Long v. Shorebank Dev. Corp., 182 F. 3d 548, 558 (7th Cir. 1999)same; Dale v. Moore, 121F. 3d 624, 626 (11th Cir. 1997) same; Moccio v.

New York State Office of Court Administration, 95 F. 3d 195, 199-200 (2d Cir. 1996).

D. The decision conflicts with the other circuits which hold that Rooker-Feldman does not affect suits by or against persons who were not parties to the state court action.

As the record shows, defendants Lisa Goodwin, John Walk, Hirshler Fleisher, Judge Catherine Hammond, and Dr. Ronald Mark Landess never participated as defendants in the state court action; thus could not have appealed its ruling, nor were they in a position to ask the Supreme court of the United States to review the state court judgment.

In Johnson v. DeGrandy, 512 U.S. 997, 1006 (1994), the Supreme Court held that Rooker-Feldman did not prevent the United States from bringing suit challenging the effects of a judgment of a state court, "because the United States was not a party in the state court. It was in no position to ask this court to review the state court's judgment and has not directly attacked it in this proceeding." Furthermore, because they were not parties in the state court action they as non parties lack the standing to seek application and protection of the Rooker-Feldman Doctrine.

The 7th circuit court of appeals stated "we too have held that the Rooker-Feldman doctrine does not affect suits by or against persons who were not parties to the initial case", Kamilewiecz v. Bank of Boston Corp., 100F. 3d 1348, 1351 (7th Cir. 1996). See also Southern California Edison Co. v. Lynch, 307 F. 3d 794, 805 (9th Cir. 2002) same".

Conclusion

From the beginning, all Jaffe has ever wanted is his one "bite of the apple", the right to have his claims heard by a jury. He would not have sought this federal action, which has lead to this appeal, if the defendants, during the state adversarial process, had not unfairly violated his right to due process. Therefore; for the reasons set forth above, the Petition For Writ Of Certiorari should be granted, and this matter returned to the lower court to be presided on by a different judge, with leave to amend, for trial by jury on the merits of the cause .

Respectfully Submitted,

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No. _____

In The Supreme Court of the United States

ALLEN V. JAFFE,

Petitioner,

v.

LISA GOODWIN, ATTORNEY; JOHN R. WALK, ATTORNEY; HIRSHLER, FLEISHER, WEINBERG, COX AND ALLEN, P.C.; DR. RONALD MARK LANDESS, DPM; CATHERINE HAMMOND, JUDGE; AND VIRGINIA PHOTOTHERAPY, L.L.C.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1163

ALLEN V. JAFFE

Plaintiff - Appellant

versus

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney; HIRSCHLER, FLEISCHER, WIENBERG, COX AND ALLEN, p.c., a professional corporation; VIRGINIA PHOTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge.

Defendants - Appellees

Appeal from the United States District Court for the eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CA-03-799)

Submitted: June 30, 2004 Decided: July 15, 2004

Before MOTZ, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Allen v. Jaffe, Appellant Pro Se. Robert Emery Draim, David Drake Hudgins, HUDGINS LAW FIRM, Alexandria, Virginia; Charles Frederick Witthoefft, HIRSHLER, FLEISHER, Richmond, Virginia; James Walter Hopper, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

PER CURIAM;

Allen V. Jaffe appeals the district court's orders denying his motion for extension of time to file responsive pleadings and dismissing his complaint for lack of subject matter jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Jaffe v. Goodwin, No. CA-03-799 (E.D. Va. Nov. 7, 2003; Jan 7, 2004). Although we decline to impose sanctions on Jaffe for pursuing this appeal at this time, we caution that further frivolous or malicious filings before this court or in the district court could result in sanctions. We express no opinion as to the motion for sanctions under Fed. R. Civ. P. 11 pending in the district court. Accordingly, we deny all Appellees' motions for sanctions. We further grant Appellees' motions to strike "appellant's Answer to Appellees' Reply Brief in support of Rule 38 Motions for Sanctions. We further grant Appellees' Reply Brief in

support of Rule 38 Motion for Sanctions." We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APEALS

For the

Fourth Circuit

NO. 04-1163
CA-03-799

ALLEN V. JAFE

Plaintiff- Appellant

V.

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney;
HIRCHLER, FLEISHER, COX AND ALLEN, P.C., a professional corporation; VIRGINIA PHTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge.

Defendants - Appellees

Appeal from the Unites States District Court for the Eastern District of Virginia at Richmond

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In accordance wit the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
July 30, 2004

No. 04-1163
CA-03-799

ALLEN V. JAFFE

Plaintiff - Appellant

V.

LISA SPICKLER GOODWIN, Attorney; JOHN R. WALK, Attorney; HIRSCHLER, FLEISCHER, WIENBERG, COX AND ALLEN, p.c., a professional corporation; VIRGINIA PHOTOTHERAPY, L.L.C.; RONALD MARK LANDESS, Doctor, DPM; CATHERINE HAMMOND, Judge.

Defendants - Appellees

ORDER

The appellant has filed an untimely petition for rehearing en banc. This Court strictly enforces the time limits for filing petitions for rehearing en banc.

The Court denies the petition for rehearing en banc as untimely filed.

For the Court- By Direction

/s/ Patricia S. Connor

CLERK

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

William K. Sutter
Clerk of the Court
(202) 479-3011)

February 23, 2004

Mr. Allen V. Jaffe
v. Virginia Phototherapy, L.L.C.
No. 03-868

Dear Mr. Jaffe:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Sutter, Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 25th day of June, 2003.

Allen V. Jaffe, Appellant,

Against Record No. 030874
Circuit court No. CLO2 -1730-00

Virginia Phototherapy, L.L.C., Appellee,

From the Circuit Court of Henrico County

Upon review of the record in this case and consideration of the amended petition for appeal and the brief in opposition, the court is of opinion the petition for appeal should be dismissed under Rule 5: 11 (c). In part, the appellee states in the brief in opposition, "The arguments being asserted as error in the Petition for Appeal, were not raised below." Therefore, a transcript or written statement of facts is necessary to determine whether the appellant stated objections with reasonable certainty at the time of the ruling

as required by rule 5 : 25.

On May 22, 2003, the appellee filed a motion to dismiss the petition for appeal in this court. Because the Court dismisses the petition for appeal under Rule 5:11 (c), The motion to dismiss is moot.

On May 28, 2003, the appellant filed a motion to exclude he appellee's brief in opposition. On further consideration whereof, the court denies the motion.

Furthermore, the record indicates that the circuit ciurt entered an order, dated January 24, 2003, dismissing the case with prejudice. The appellant filed a notice of appeal in the circuit court on February 7, 2003, and a petition for appeal in this Court on April 21, 2003. Therefore, the appeal was docketed in this Court, and the circuit court was without jurisdiction to enter the order dated April 29, 2003. See $ 8.01-428(B).

For the reasons stated above, the petition for appeal is

dismissed.

A Copy,

Teste:

David B. Beach, Clerk

By:

_____